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**ICANN Transcription**  
**GNSO New gTLD Subsequent Procedures Working Group**  
**Thursday, 12 December 2019 at 20:00 UTC**

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**JULIE BISLAND:** Good morning, good afternoon, good evening. Welcome to the New gTLD Subsequent Procedures Working Group call on Thursday, the 12<sup>th</sup> of December 2019.

In the interest of time, there will be no roll call. Attendance will be taken by the Zoom room. If you're only on the audio bridge at this time, could you please let yourself be known now?

Okay, hearing no names, I would like to remind everyone to please state your name before speaking for transcription purposes. Please keep phones and microphones on mute when not speaking to avoid background noise. With this, I will turn it over to Jeff, Cheryl, or Julie.

**CHERYL LANGDON-ORR:** Let's get the administrivia started at least. Thank you. Perhaps Jeff [inaudible] has all of you joining today. I see a few more people will turn up in the next couple of minutes. It's an important call today because what we're intending to try and do is dig in to the Predictability Framework and hopefully finish that off. And if

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time is permitting, we're going into the string contention mechanisms of last resort.

But before we dive into that, two things. Does anybody have a Statement of Interest update they would like to share with us? I'm not seeing anybody raise their hand yet in the participants list and nothing coming into chat, we see not. Please do let us know as we work on the continuous disclosure if you have a Statement of Interest change that you needed to make. With that, I'll just ask anybody who has any other business. No, it's not [inaudible], Maxim. Why is my chicken deciding now is the perfect time to lay an egg? But there will be other bird noises if my mic remains open because I'm out the front and it's the third central here. I can give you in chat updates on who could be [squawking] if you like. But with that, that's actually a call for any other business other than my bird watching here at the front [Vernon] here in Australia. If you'd like to raise anything, better say now. We'll do another call before the end of the call for that.

Okay, I'm not hearing anything. I will assume that if one of you has any other business, you'll mention it to us in chat. Is Jeff back yet? If not, we'll just dive into Predictability Framework. Feel free to jump in when he does get back. Oh Anne, you have your hand raised. Sorry. Do go ahead please, Anne.

JEFF NEUMAN: I'm back.

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ANNE AIKMAN-SCALESE: Hi, Cheryl. It's Anne. I'm trying to make sure I'm not double muted. Can you hear me?

CHERYL LANGDON-ORR: Yes, we can.

ANNE AIKMAN-SCALESE: The only point I wanted to ask about was in relation to the chart on the Limited Appeals Mechanism if I had sent that to the IPC for further comment. Is there any sort of deadline within the working group as to when we want to finalize that chart? Because I have some comments from Brian Beckham at WIPO that have not had an opportunity yet to review and incorporate. I'm expecting – I may get more input from IPC, and so I'm wondering at what point we're going to close off any further comments on limited appeals mechanism. It's going to go out for public comment I think but –

JEFF NEUMAN: Thanks, Anne. This is Jeff. I'm back. Sorry for missing a minute or two. No, it's not closed off for comments at this point. I don't think we've set any kind of date for that. Obviously, the sooner the better because then it will give more time for other people to consider those comments as well but there's no cut-off date at this point.

ANNE AIKMAN-SCALESE: Okay, thank much, Jeff.

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JEFF NEUMAN: Sure. So, I'll assume that we pretty much just got introductory Statement of Interest stuff done and I'll just go right into the subject for today which is predictability. I'm just looking at the chat.

CHERYL LANGDON-ORR: That's correct. Yup. Dive right into it.

JEFF NEUMAN: Awesome. We're talking about predictability. Just as a reminder, we have been through this a number of times and, in fact, the last time we talked through a bunch of these issues was at ICANN66 in Montreal. So what we've tried to do with this document now, it should look familiar because this is the same document that we had from or just before ICANN Montreal, but it's been updated hopefully at least as best as we could with all of the comments and issues that were raised at the ICANN meeting. So what we're going to try to do is go fairly quickly through a bunch of the stuff that I think we are fairly settled on and spend more time on some of the issues either we started talking about at ICANN or that we realized that we have to spend more time doing. Hopefully, we won't go backwards and talk about some of the same things, but let's see where we get to. I didn't scroll back in the chat but I do see Julie put the link up for the Predictability Framework. So if you want to follow along with the Google Docs, you can do so.

I'm going to skip the section of what's the issue we're trying to address because again I think we talked about that at ICANN, but I do want to go over again the policy goals because as we go through each of the items of the Predictability Model, we should

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keep these goals in mind, of course, assuming that we are still all good with these. I think from the previous discussions, I think we are but it never hurts to go through it again.

The policy goals in what we're trying to accomplish here, the first one is "To the extent that issues arise, after the application acceptance window commences, that may result in changes to the program and its..." I don't know what happened to a couple of words here. As I'm reading it aloud, it doesn't seem to make sense. But essentially, the part of the goal that might have to work this [inaudible] but this is intended to apply to the extent that issues arise, after the application acceptance window opens, and especially to those items where issues come up that may impact or result in changes to the New gTLD Program and its supporting processes. And what we're saying is that those issues must be resolved in a manner that is as predictable, transparent, and as fair as possible to the impacted parties.

That sentence has gone through a bunch of changes, so that could be why the grammar is not exactly correct on that, but essentially I think you get the point. We'll work on the sentence structure. I want to pause one second because I've been asked to ... someone has joined with a phone number ending in 906. If that is you, if you could just let us know, that would be great.

The second policy goal that we are hoping to achieve is: "To promote the predictable resolution of issues, the community should rely on a Predictability Framework, specific to the New gTLD Program, that guides the selection of mitigation mechanisms."

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The third one, “In the event significant issues arise that require resolution via this Predictability Model, applicants should be afforded the opportunity to withdraw their application from the process and receive an appropriate refund.”

Next one is: “The Predictability Model intends to complement the existing GNSO processes and procedures and is not intended to be a substitute or replacement for those GNSO processes, nor should the model be seen as supplanting the GNSO Council’s decision-making authority. In fact, the GNSO processes and procedures are specifically incorporated into the Predictability Framework. In the event of a conflict, existing GNSO processes and procedures,” including this list of processes that are currently in the GNSO Operating Procedures. The point is that those processes control and we’re not intending to amend those or to replace those.

Does that make sense? Okay. Hopefully, we figured out who that phone number was. Paul has got his hand up. So, Paul, please.

PAUL MCGRADY:

Thanks, Jeff. I’m sorry to introduce this concept now because I think we’re pretty far along in this, but I didn’t see it here. Is there anywhere else in the document where we come out blatantly, say that there’s a bias against change to the program after applications are in and that we won’t change the program to deal with corner cases? I think sometimes there’s a knee-jerk reaction change everything for everybody just because something odd happens to one particular application. Do we hit that concept anywhere in here? Apologies for not knowing. Thanks.

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JEFF NEUMAN:

It's a good question, Paul. I'm trying to remember all of the other sections. I do believe we have that in previous overarching sections but we'll make a note of it just to make sure. I think as we got to the summary document, the real purpose was to hone down on the issues as opposed to those kind of overarching statements but we can't lose sight of that. Let me ask if there are other questions or comments on that just to make sure that we're all on the same page. I don't know why my hand is raised. I might have accidentally done it. Are there any other hands up or anyone else that wants to comment?

Okay, what are we specifically proposing? Number one, the type/scope/context of a change to the program will guide which of the processed should be followed, essentially. That's point number one.

Point number two is that the working group recommends that a Standing Predictability Implementation Review Team (that we will call "SPIRT") be formed after publication of the Applicant Guidebook to review potential changes to the program and to recommend the process that should be followed when considering those changes in accordance with the guidance provided below.

The one thing I'm going to say that I noticed in going through this is that we have a little bit of a conflict in the wording. So if you go back to the policy goal, it talks about dealing with issues after the opening of the window, whereas this one talks about the team being formed after publication of the final Applicant Guidebook. That could be a significant period of time. What's supposed to

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happen is when the final Applicant Guidebook is published, that's when the communication period starts, and so there could be the significant period of time. So we need to make sure that there's no conflict and I guess come through a decision as to when we think this Predictability Model would kick in.

In using the GNSO procedures as sort of a guideline, when you look at something like the consensus policy implementation framework, it talks in terms of the effective date of a policy as when implementation technically ends and when execution – I guess for lack of better term – begins. I think it makes the most sense, at least when I think about this, is to sync up the fact that this team should deal with any issues that arise after publication of the final Applicant Guidebook as it says here in what we're proposing as opposed to what it says above in the goals. In the goal section I think is where it was.

Anyone have any thoughts on that? I mean we do need to kind of sync these two up. So it's going to be one of those two options. Just scroll down. I don't see anyone with a hand raised.

Donna is saying the chat, "So that would be after the conclusion of the IRT." Yeah, Donna, that's what's intended. Presumably, if you looked at the consensus policy implementation framework, the IRT ends officially at the effective date of the policy. I think in this context, that would be most likely the day that the final AGB is released.

I'm hearing silence, so that's the proposal I would make. We'll make a note of that. If you think otherwise or think it over after this



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call and think that it's better that we started at the time that's mentioned in the policy goals, just let us know.

Okay, the next point in what we're proposing, which again I think is sort of obvious is that the GNSO Council is responsible for oversight over the SPIRT group and may review all recommendations of the SPIRT in accordance with the procedures outlined in the GNSO Operating Procedures and Annexes thereto.

Categories of Changes to the New gTLD Program after Publication of the Applicant Guidebook. This next section deals with the different things that could arise. Before we get there, let me just ask if there's any questions or comments.

The first category of changes, which we'll talk about our changes to ICANN Organization internal processes. The first part of that or the first type of those internal process changes are what we are calling minor ICANN organizational internal process. We say that that could be implemented by ICANN Org without the need for consultation. A minor change is defined – and you can read it here – as “A change to ICANN's internal processes that does not have a material impact on applicants or other community members, doesn't change applications, or any of the processes and procedures set forth in the Guidebook.”

Again, because of a lot of changes in the sentence structure, this next sentence repeats what's above but it says, “This usually involves no changes to the Applicant Guidebook, including the evaluation questions or scoring criteria, but may involve the way in which the ICANN Organization or its third-party contractors meet

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their obligations under the Applicant Guidebook.” Then we provide some examples. I think we give another example that came from the discussion at ICANN.

The first one is a change in the internal process workflow for contracting or pre-delegation testing. ICANN changes its accounting systems, selecting or changing subcontractor to perform assigned tasks under the Guidebook where the original selection process didn’t involve feedback from the community. ICANN had a number of subcontractors including evaluators and others that never initially went out for public comment as to who they selected.

I’m trying to remember back in 2009 or ‘10 when they initially selected, for example, the technical evaluators. I don’t think even the community had feedback in the qualifications of those evaluators. But certainly, the community did not have input on that selection process. So if ICANN wanted to change it to vendor, that would not be the type of major change that would need to go through this process here.

What we added was ICANN Org rolling an organization-wide change that includes the New gTLD Program processes but, nevertheless, has no material impact on the program. So this could be something like I can create a new group within GDD to handle customer support. This is an organization change, it would not impact or shouldn’t have any impact on the program.

Still talking about internal ICANN organizational changes, this part B deals with those non-minor changes to ICANN Org’s internal processes, and what we’re saying there is that these changes

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need to be communicated to all impacted or reasonably foreseeable impacted parties prior to deployment of the change. These are changes to ICANN's internal processes that have or likely to have a material effect on applicants or other community members.

An example here could be, let's say ICANN Org changes its Internal Service Levels. This could be, for example, ICANN may say something like in their Guidebook that they will ... this is just a made-up example. Let's say they say, "We're going to reveal all the applications no later than 60 days after the applications are submitted." But it turns out because they get a thousand more applications they thought they were going to get that they need to change that now to being – instead of two months changes to three months. It does have some impact on applicants and other parties but it's a type of change that we think needs to be communicated to the impacted parties but not necessarily need to go through any kind of additional formal process.

Let me stop and see if there are any questions or comments on either A or B. Got a quiet group. I'm hoping that means that we've discussed this issue so many times that we're all in agreement with this.

Okay, part C. This is still under the category of ICANN Internal Processes but here we're not talking about a change to an existing internal process, what we're talking about here is a new internal process added that wasn't there before. If that new change to the internal process has or is likely to have a material impact on applicants or community members, then we would

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employ this new Standing Predictability Review Team, the SPIRT team.

Examples that we came up with during our discussions over the several months and at ICANN, this could be, let's say, a new public comment platform/tool is intended to be utilized. Something like this could have some sort of material impact.

Another example would be a new process platform that's created to submit an objection. This could also mean something like a new procedural mechanism to determine the order in which applications are evaluated. We don't expect that to happen again because we hoped that we learned our lesson in the 2012 round with digital archery moving to the random draw. But who knows? There could be a change of the law or something that would no longer allow us to do a random draw, and so if that process had to change or we had to do a new procedural mechanism to process those or put those applications in the queue, then that would be the type of change to have a significant impact on the community members and applicants, and so the utilization of the SPIRT team seems appropriate.

A question that we have that was highlighted because it was one that we were thinking about where it would fit in was, what if there's a substantial change in the evaluation timeline or where it's determined that additional fees would apply. This could mean that for the first part, again let's say that ICANN initially says that it would evaluate all the applications within a specific period of time but because of the flooding of applications that time period is now extended by a year or two, is that the type of thing that needs this team to be formed and to go through that process, or does that fit

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in to one of the other categories? I'm hoping with something like this that hopefully when we talk again about application queuing and evaluation will account for this type of situation, where if that time period does need to be extended, there'll be something in the Guidebook that deals with how that will be done. But if we didn't deal with that, would this be the type of change that we need to go through this team?

I'll go on since nobody has comments yet at this point. What I should do – sorry, I haven't been doing this well. Julie, is there a way to also on the screen see the comments on the side? If not, I'll just go to the Google Doc anyway, which is where I probably should be looking. Yeah, I think that's good.

There was a comment from Justine that says, "What would be considered substantial?" I think it's a good question. Again, I think this was taken as a note after one of our conversations, to the extent that we think or do not account for that this type of extension of the timeline, we'll have to figure out what substantial means. Again, I'm hoping that when we get back to the topic of application processing, we will put something in the Guidebook that deals with this.

Let me go back to the next paragraph and then read the comment that was from Kristina way back in May. This was ... in fact, I don't know if we necessarily need all this language because this is before we came up with a bunch of terms of the SPIRT. But essentially, once the changes are agreed through the SPIRT process, obviously there needs to be communication of these changes to the effective parties before those changes are deployed. Then what we also say here is that the changes are

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envisioned to have non-substantive impact to applicants and/or community members. There was a question that was asked or comment filed on this. It was an example that Kristina had raised way back when where it wouldn't be substantive but could have a material adverse impact. This was filing Legal Rights Objections through a proprietary platform instead of e-mail. I think we addressed this in one of the use cases above, but let me go to Anne.

**ANNE AIKMAN-SCALESE:** Thanks, Jeff. Thanks to staff for unmuting me. My question was not about that language per se. It was the little higher up there in the second sentence where it says staff will work with the SPIRT and the community to develop the solution. I'm just a little bit concerned about the portion that says "Staff will work with the community." It seems like we're developing this mechanism that is the SPIRT and staff is supposed to work with them. It seems a little bit vague in terms of what's the staff requirement to work with the community separately from its requirements to work with the SPIRT. If I were on staff, I'd wonder what my obligations were. That's my point.

**JEFF NEUMAN:** Yeah, Anne, great point. I tried to make that as well. Because we keep adding language and revising it, you're actually right. Basically, it should just say, "This goes through the SPIRT team and then see below," essentially, because that's where we define the processes and procedures of the SPIRT team, which of course includes collaborating with staff. At least that first sentence

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should probably just be replaced with that you go through this SPIRT process below or something like that. You're right. It is very confusing now where it is.

Okay, let me look back. Anne says she agrees. Was there any hand up because I think Steve had said there were a couple of hands up and I only see Anne's. No? Okay.

Going to that footnote. Sorry, I'm not there yet. Can you scroll up a little bit? I want to make sure that this footnote is still relevant. Can you remind me which paragraph this footnote relates to, where it is? Just so we have an understanding. Okay, so three should be somewhere right around there. I don't even see three right now. There it is.

This is on the new ICANN Organization Internal Process. I think we just in the footnote tried to give some more definition around that, but I think we also did that with respect to the example. Let's review that. We'll take that back as an action item to make sure that that footnote still is in sync with the examples that we put in the section as well.

It says Paul had his hand up. Paul, are you in the queue? I don't see it up currently.

Okay, next section. Alright. Then let's go to the next section. This now deals with possible policy level changes. Before we were talking about ICANN Internal Processes, that these are policy level changes, not the ICANN internal ones but ones that obviously are more external in nature. What we say here is, "These are potential changes to implementation that may

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materially differ from the original intent of the policy and could be considered creation of new policy. An example is the development of an application ordering mechanism.” This goes back to the digital archery, which won’t be an issue going forward, but it’s just there as an illustration. “Collaboration with the community through the SPIRT.” This is exact same thing. We should change this language because it really should just say the work with the SPIRT team. Then in this section, unlike the previous one, we go into some options that the SPIRT team could consider.

The first option, the SPIRT team could get together and say, “You know what? This change really isn’t significant,” meaning that it’s not likely to have a material impact on an affected party and that the proposed change is actually consistent with the existing recommendations. We probably should put a footnote. Not just that it’s consistent with the policy recommendations but it’s also implementation recommendations from a review team. I want to make sure we don’t lose sight of that too, if that makes sense. Hopefully, I didn’t lose anyone with that.

Because after we develop our policy recommendations – we in this working group – and it goes to the Council and up to the Board, and the Board approves it, there’ll be an implementation team that’s set up that will come up with not necessarily new policy but it will have to come up with implementation recommendations. Now we’re talking about changes after the Guidebook is published that may be inconsistent with an existing policy or implementation recommendation or the way that Steve puts it is fine as well, existing recommendations and ensuing policy implementation.



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Let me go to Anne. Anne, please.

ANNE AIKMAN-SCALESE: Thanks, Jeff. In terms of the prior question, and I certainly didn't disagree about when the SPIRT convened, but you point out the Applicant Guidebook will be published for public comment. I guess if the IRT still convened at that point and the IRT responds to the public comment on the Applicant Guidebook.

JEFF NEUMAN: Steve, correct me if I'm wrong, my interpretation would be that the normal GNSO IRT would be in place until – I don't know if the Board has to vote to declare the Applicant Guidebook final. But whatever the process is to declare the Applicant Guidebook final, that's where the normal everyday GNSO IRT would stop.

ANNE AIKMAN-SCALESE: Okay. So what we're saying is that the SPIRT comes into play after the final version of the Applicant Guidebook is published.

JEFF NEUMAN: Right. Thanks, Anne. Yeah, that's the intent.

ANNE AIKMAN-SCALESE: Okay. Thanks.

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JEFF NEUMAN:

Then going back, the second option – SPIRT team could say, “You know what, this may be inconsistent with an existing recommendation or policy implementation recommendation.” So we do think that this matter needs to be referred to the GNSO Council, and then of course the GNSO Council would have the discretion as to how they want to handle this issue. They have all the mechanisms under their operating guidelines. So this is again just a list of what’s currently there, but if they develop another one, obviously that would also be at the GNSO Council’s discretion.

Now, under extraordinary circumstances – then I’ll get to Paul in one second – if there’s something really extraordinary that needs to happen, we are saying here the SPIRT team could recommend that the New gTLD Program be halted for some amount of time. Obviously we’d have to ... I shouldn’t say obvious. We should be specific here and say that we’d have to provide the rationale and what the trigger point would be to get the program restarted I think is something we probably should put in there. Paul, please.

PAUL MCGRADY:

I guess my question here is, they’re all wrapped in together. The first one is, is this the only mechanism for changes after the Applicant Guidebook is published? In other words, is this meant to be exclusive of going to the Board for a change? Because that’s what happened last time. The closed generic is a great example of something that somebody didn’t like after the fact, and so they lobbied the Board for a change. If this is not meant to be exclusive then where does this stuff come from that’s fed into the SPIRT? In other words, if they recommend things to the Council for a consideration, where are they getting the inputs from? If the

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SPIRT will be lobbied by the community the way the community lobbied the Board last time then I guess I'm not seeing what the SPIRT does that the Board didn't do. We're just creating a second bunch of people that could be lobbied if you're not getting any traction with the Board. I'm sort of asking, what's the purpose of this? How is it going to work in relationship to the Board, not just the Council? Thanks.

JEFF NEUMAN:

Great questions, Paul. The reason we are trying to set this up is to – I can't say stop people from going to the Board because they're going to do it whether ... we can't stop people from lobbying the Board or doing whatever they're going to do. But the hope is that this would provide the mechanism for the Board to kick it back to the community. So if someone sent the letter directly to the Board, the hope would be that the Board would then funnel that request through this process.

If it was a request to change an ICANN internal process, that's why we have all these different things. But if it was a request for changes to something that's inconsistent with an existing recommendation or ensuing policy implementation, the hope would be that, yeah, that they go to the SPIRT team or that the Board sends it to the SPIRT team. Remember, the SPIRT team is supposed to be made up of community members – and we'll talk more about the composition – but it's essentially to give the community more – I don't want to say power – but more input into the process and discouraging everyone from bringing everything to the Board right away.

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So I take on your point that could easily result in people lobbying the SPIRT team, but ultimately at the end of the day, the GNSO Council will have oversight over the SPIRT team. So if it sees that the SPIRT team is being lobbied or is subject to undue influence the Council has hopefully that check and balance to be able to right the ship. Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Donna Austin from Neustar. I think I might have a fundamental misunderstanding of what the SPIRT is supposed to be doing here. My understanding was that in the event that ICANN staff decided that they needed to change the way that they were implementing something or a process that was changed in substance is that the SPIRT is the mechanism for staff to funnel that discussion and consideration as to whether that it's reasonable to go forward with that change. But what you're suggesting here is that it goes beyond that, that if there's any suggested changes coming from the community that it's the SPIRT that has the ability to consider that and decide whether that change should be made. Is that correct?

JEFF NEUMAN:

Parts of that are correct. At the end of the day, ultimately, request will be submitted ... now, we can determine what ... sorry, I'm just thinking and talking at the same time. I should probably just talk or think. It's not intended to be like this mechanism where anybody goes to the SPIRT team and says, "I want this change, I want that change." It's hard to say that it's exclusively for staff because it also could be that someone goes to the Board and asks for this.

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Or the community, let's say a stakeholder group believes that something should be changed because of something drastically wrong that they see. It's hard to say that it's exclusively for staff.

Essentially, what we're trying to create is a community mechanism for input into how changes are made. I'm not saying this right. You had said that the SPIRT team decides whether the changes are made. I want to stay away from that because I don't think the SPIRT team decides whether changes are made, they decide the process on how to deal with a request and whether they would recommend that it goes, let's say, to the Council because it involves some policy level changes or whether they would recommend that, "You know what, this change is really minor and so if staff wants to implement it, they can."

I hope that makes sense. It's a little bit different than what you said partially. Let me see if Donna wants to get back in the queue and then I'll go to Paul.

DONNA AUSTIN: Jeff, I think I'm still a little bit confused. Maybe Paul and Anne can clear it up and then I'll be more comfortable after that. Thanks.

JEFF NEUMAN: Okay. Paul, please.

PAUL MCGRADY: Thanks. I'm actually less comfortable than when we started talking about this. The inputs were not becoming exclusively from staff or

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they would. If they're coming exclusively from staff then that's I think better because then it would just be staff trying to get the SPIRT to do something rather than everybody having yet another place to go to get changes after the fact. In the last round, as we saw, people went to the Board, people went to the GAC, people went to the Council. If we just create another body that people could go to, we're kind of building an unpredictability framework rather than a predictability one. So I think we have to answer the question, where does the SPIRT gets its inputs? Obviously, its outputs can go to the Council, and the Council can either act on them or not. That makes sense to me.

There's nothing to be done about the Council, people who go to the Council asking for stuff. And there's nothing to be done about people going to the Board or the GAC and ask for stuff. But I think creating a fourth place for people who go and ask for things after the fact. I guess I just don't see the benefit. Thanks.

JEFF NEUMAN:

Thanks, Paul. I think you're right. It's not intended to create a fourth place as you had said. If we think back to the 2012 round of some of the different issues that came up, they came from a bunch of different areas. It didn't always come from ICANN staff. Ultimately, ICANN staff was involved. Let's think about some of the changes.

Let's say name collision as an example. Name collision was raised by let's say the SSAC and technologists and the security community. Let's just use that as an example. If I'm wrong, please don't harp on the example but more of the concept. The security

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community came to ICANN – and I don't know whether they came to staff first or they went to the Board first or they did it through the SSAC or one of the other mechanisms – but ultimately, the staff then took it on and then ran its own process. But then if you look at the changes to the agreement, changes to the agreement that came strictly from ICANN staff that was coming up with the mechanism to deal with government objections and PICs. That's where it came out of. But if you look at – I'm trying to think of other examples. It came from different sources. If you look at the changes to the Clearinghouse stuff, in some cases, it came from the registry. So when we were advocating the use of a centralized database as opposed to the decentralized one that was initially proposed, that came from the registries. So what we could say is that we're not intending to set up a fourth place for these requests to come into but we're basically saying that it comes in through existing channels but ultimately changes shouldn't be made to the program until it goes through the SPIRT team. Maybe that's the way to say it.

Saying exclusively from staff then, in my mind at least, limits where other requests may come from. But like, Paul, you said, and Donna, we don't want to be creating this other body that people go directly to. Does that make you more or less comfortable, Paul? Then I'll go to Anne.

PAUL MCGRADY:

Yeah. I guess if we don't make it exclusively that this is something that the staff can input into then people will use it. And if it's just another method for people to suggest changes after the fact then

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it's good for people who would suggest changes after the fact. Let me ask the question. Maybe that will help me understand.

Why would we want to create something that people could come to and ask for changes when they could already go the Board, the GAC, and the Council? If we could figure out something special that the SPIRT could do that those other bodies can't do, that actually would be a good thing, not a bad thing, which I'm not sure about. But assuming that it's a good thing, what is it that this group would be able to do that the others won't be able to do? Is it just meant to be a speedier Council? I'm not sure that that's worth the roll the dice that we're creating another group to be lobbied for [inaudible] changes. Thanks.

JEFF NEUMAN:

Thanks, Paul. One thing we could say is that it is not the SPIRT team cannot on its own initiate a request or on its own take in a request from the community. It needs to be referred to by whether it's the staff, the Board, or another element of the community. Why it's better than the Board in a sense is that you now have a group that's made up of community members that understands the policy and the recommendations and they're helping out in the process as opposed to the Board making this top-down decision. That's one of the reasons why it's a better option of who to deal with the issue at least first instead of everything going right to the Board when someone [inaudible] in your closed generics example.

So in theory, if someone said, "You know what, I don't like this and we didn't deal with it." We are dealing with closed generics but let's say we hadn't and we're back in 2012, there was a big letter



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writing campaign to the Board about doing something about closed generics, we're setting up a group that the Board could then say, "You know what, that is a legitimate issue. We think it should be taken out. We're going to refer this to the SPIRT team and they will make a recommendation as to how it is dealt with." Meaning, not how the substance is but how the community will deal with the request for the change.

Justine says, "Yes. Kind of a subject matter expert type group." Cheryl is stating, "So I think I'm hearing SPIRT as a mechanism or point in the process and not the..." Right. It's not intended to be the instigator of changes. It's not intended to where the community goes directly to, but it's supposed to be when the community thinks that an issue should be taken up, it is supposed to be the body that ultimately helps determine the process that's used depending on the type of change.

I see Kurt's comment: "And Paul's characterization of a non-predictability mechanism." I'm sorry, Anne's been in the queue. Anne, please.

ANNE AIKMAN-SCALESE: I think it's important to remember the reasons that you had originally for establishing this and why it's called the Standing Predictability IRT, which is that we all acknowledge that in the 2012 round issues that rose ... further implementation issues arose after the applications were in.

For example, let's take GAC advice that comes after the applications are in. Send the GAC advice to the Board. Rather

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than there being kind of a halt on what's going on, the step for that would be that the Board would send that to the Council for, "What's your input on this?" and "Does it require policy work, blah, blah, blah?" Then the Council would essentially sign that to the standing group that, theoretically at least, has experience in the development of policy for the next round.

I see it as something now where you have this tool in place that's operating on a constant basis to address problems quickly. I would be adverse to limiting the power of SPIRT to bring up things on its own, but I will say that in the Policy and Implementation Working Group, what we found was it made sense in the procedures that if during the implementation phase of an IRT, somebody on the IRT thought a policy issue was raised, that they could raise that with the GNSO Council. While ICANN appreciate, the folks don't want to just create an additional complaint process. Especially since this needs to be consistent with and subject to the existing annexes, we still have to have the ability of someone on the SPIRT team perhaps even in a representative capacity to raise an issue and say, "Well, I think this is a substantive policy thing. I don't think it's just implementation."

But I think the point of the SPIRT team is really readiness. It's, "Hey, this body exists." I agree with you that it is preferable to the Board saying, "Okay. Well, now we have to make the decision ourselves." It gives them the ability to go to the GNSO Council and then the council has this team as the standing implementation tool. I think it's very useful for that. As you know, I was not a big fan of it at the point where it was not proposed that there'll be oversight by GNSO Council, but now that you straightened all that

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out, I think it's going to be extremely useful if properly staffed. Thanks.

JEFF NEUMAN:

Thanks, Anne. I do think I agree with you. I think it could be incredibly useful. I think you said a bunch of stuff better than I did. We could say that all requests have to come in either from the staff, Board or the Council. We could say that, I guess, but we also want to avoid the situation where, let's say the SSAC goes to the Board, and then the Board just does something. No matter where this legitimate request comes from, we don't want it to avoid a community process. This is the community process that we are setting up to recognize when something is policy and needs to be dealt with through, as Anne said, the GNSO process and procedures, or when if it's not quite that type of change, to have this group of experts that could make a recommendation and they're experts from the community. Again, we could say all requests considered by the SPIRT team must come from either staff, the Board, or the GNSO, but then we would also want to say and any other requests cannot be implemented without going through this type of process.

Donna is in the queue, and then I'll get back to the chat.

DONNA AUSTIN:

Thanks, Jeff. To your point about the GAC – and this also relates to the SSAC – one of the challenges we would have with this process is if the Board receives GAC advice, they have a process that they have to follow. If the GAC advice and a policy

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recommendation are at odds or if the Board is the only one that can reject GAC advice, so there's a whole process that would have to go on at some point to be able to make that decision. I don't know how we could recommend here that if GAC advice comes to the Board, then the Board must send it back through to us. I'm not confident we could do that.

Similarly, for any advice that comes from the SSAC, that is security, instability related, the Board has to take that seriously. Again, I'm a little bit concerned about the ability of the SPIRT via a body that could get in the middle of that. I'm a little bit concerned about how that would work in reality. If we're going to use this SPIRT to consider community requests for changes to the Guidebook, then that changes might view of the composition of the SPIRT. I know it's been noted that the conflict of interest is a challenge, but if we decide that SPIRT can consider request from the community or have some consideration of community request, then that changes the conflict of interesting for me and I'm not sure understanding the nature this community that we can overcome conflict of interest issues. I mean, I don't know if we've discussed how many representatives there should be on SPIRT or anything like that but the conflict of interest becomes a very different conversation, I think. I'm not really sure that we're there yet. Thanks.

JEFF NEUMAN:

Thanks, Donna. I'll take off my chair hat because this is not like an official view of the group or of leadership, I should say. I don't necessarily agree with what you said at the beginning. If the GAC gives advice to the Board, the Board has right – as you said, I

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could accept it or reject it – but we could mandate that if it impacts the gTLD program, that we, the GNSO, set the policy for an implementation, we absolutely could say that these issues need to go to the SPIRT team. Ultimately, at the end of the day, the Board can also accept or reject what comes through the GNSO process and that GNSO process we’re setting up is the SPIRT team. Well, at least partially.

I disagree with the notion that if the SSAC or the GAC make a recommendation and that changes the program, that we cannot mandate those changes come back to us, for us to provide recommendations. I don’t see that as a conflict at all.

In fact, that’s essentially without a formal process, what happened with let’s say closed generics. The Board didn’t just say, “Okay, thank you, GAC, for your advice on closed generics.” It then took that advice and said, “We’re going to get input from the GNSO.” This is the mechanism that we are saying should be followed when those types of changes are being requested.

On the conflicts issue, I’m not sure because the SPIRT team is not the final arbiter of whether something – because the SPIRT team is not the final arbiter as to whether a change does or does not get implemented because it has the check and balance of the Council, then ultimately, it has the check and balance of the Board, that the conflicts are as big of a problem as they normally would be. Because I don’t think we’re giving the SPIRT team the power to make those decisions.

What we’re trying to avoid is to say that ultimately in the bylaws – I know you say you’re not confident that my take is correct, but the

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bylaws do state that the GNSO is the entity responsible for making policy recommendations with respect to gTLDs. That's regardless of what advice it gets from the GAC or the SSAC. It still needs to get input on recommendations from the GNSO on any of these issues. What we're saying here is that if there's going to be a requested change to the program, that the process for getting community input is this predictable process of going through this SPIRT thing.

Anne's in the queue. Anne, please.

ANNE AIKMAN-SCALESE: Thank you, Jeff. I do think this is a very helpful discussion in terms of refining the channels. It strikes me that we could probably end up deciding that inappropriate compromises that request to the SPIRT team should only come from staff upward and from GNSO Council downward, if you will. As I'm listening to Donna and Paul, yes, GAC advice has very special rules. The Board obviously is entitled to act on GAC advice, although they say that they don't make policy. In the 2012 round, what we all found was there were decisions made that Council members and the community felt should not have been made at the Board level. That was one of the reasons we instituted the whole input guidance and EPDP process. It would seem most appropriate, not that the Board would refer an issue for further input directly to the SPIRT team, but rather to the GNSO Council and GNSO Council would decide if it wants to put that issue in front of SPIRT or respond otherwise to the Board.

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Obviously, we're talking about standing implementation issues, and so staff, of course, to raise an issue about that. It strikes me that if a member of the community has an issue to raise that could be, as Paul was saying earlier, raised either through their representation on Council or through the Board itself. That then you would have the correct channels. Again, you would come from the Board, the GNSO Council or the community member raising it with GNSO Council, and GNSO Council sending it to SPIRT. Then you would have the properly defined channels that kept the function in the realm of standing predictability IRT. Is that making any sense?

JEFF NEUMAN:

Anne, I think it made sense. The one part of that that I was thinking that I'm not sure it's necessarily correct is that something would have to go to Council before it goes to SPIRT team. That would slow down the process tremendously because the Council, they have to make all the decisions generally through a resolution, it requires a bunch of notice and all of that time could be time spent up with the SPIRT team going, "You know what? We don't think this involves a policy level change and it should be done." Of course, that's the recommendation of SPIRT team and it could always be overturned or overruled by the Council. But the way it was envisioned when it was initially discussed was that things don't have to come to the Council first and be referred. Otherwise, that would just be a huge bureaucratic delay.

But the Council can be one source of input. If the Council does get an issue that it thinks it's discussing, it could then say, "You know what? This is appropriate to go to the SPIRT team." But I don't

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think it wouldn't be required that the Council assign it to SPIRT team. The SPIRT team could get it from staff or from the Board. I think you did mention that as other options as well.

ANNE AIKMAN-SCALESE: I'll just come back on that, Jeff. I'm actually suggesting that the Board not raise issues directly with the SPIRT team, that they go through GNSO Council before doing so. Just in terms of following a protocol that keeps the roles clear and trying to narrow based on concerns expressed by Donna and Paul. What I wonder there too is whether members of the community, especially on implementation issues could raise their implementation issue with the staff, and the staff could raise it with the with the SPIRT so that you don't have a whole bunch of written requests being lodged with a SPIRT from all different directions.

JEFF NEUMAN: Thanks, Anne. We could say that it can come from the Council but it can also come from staff or the Board directly. Again, if you think about the SPIRT team, part of what it's considering is this really policy and therefore should be dealt with by the GNSO Council. It wouldn't really make sense if the Board has to then – as the first send it to the GNSO Council, GNSO Council is Maxim [inaudible], that's usually fast like one and a half months to two months. That's not fast. Then if the Council just sends out the SPIRT team, the SPIRT team just sends it back to the Council, says, "No, this involves policy," you've now probably used up four months. Then it becomes a very inefficient bureaucratic body.



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What's envisioned really is to be ... Again, when these types of issues come up and they require change on a relatively fast basis, you have this group in the middle of the SPIRT team made up of subject matter experts and community members that are able to quickly get together a standing group again, that they're able to quickly discuss that and say, "You know what, this is a policy issue. GNSO, you deal with it," or "You know, what, it's not really a policy issue. It's something else and therefore, either ICANN can implement it directly or ICANN should just notify the affected parties," or whatever the other options are. So it's intended to be that faster type process, but if it was required to go to the Council first, it's not worth having, I don't think. Donna, please.

DONNA AUSTIN:

Thanks, Jeff. Perhaps what would be helpful – maybe I've missed this because we move on and we forget what's been stated before – but if the SPIRT is related to implementation issues only, then I'm a little bit more comfortable with what it does. And if it is related to implementation issues only, it doesn't really matter whether it's come from the community or whether it's a question from staff or whether it comes from Board. That's irrelevant. If it's only there to deal with implementation issues, then maybe I'm less concerned about what SPIRT is intended to do.

Paul kicked off this discussion with a question about an overarching statement that there'll be no changes to policy. Once the policy is signed off, there's no opportunity to open those policy debates again. I think that's important to ensure that we do that. In my mind, it would be helpful if we made it quite clear here, that all that this standing team is doing is considering issues that are

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related to a change in implementation. Maybe that would satisfy concerns that I had. Thanks, Jeff.

JEFF NEUMAN:

Donna, I think you're getting closer to saying it much better than the way I did. Which is, it is intended to just deal with implementation issues but it's also intended to be a tool where staff could go to SPIRT team and get feedback as to whether at least the SPIRT team feels like it's policy or implementation. If it's policy, it has to refer then to the GNSO Council to deal with the normal way that policies are dealt with. It's intended to just deal with implementation issues but also is that vehicle for providing recommendations as to whether it believes its policy or implementation. I hope that makes sense.

DONNA AUSTIN:

Right. To Paul's point, one person's implementation is another person's policy. But I think if we make it clear that the purpose of the Implementation Review Team is they can only make decisions as it relates to changes in implementation. There will likely be a discussion about whether something is policy or not. And if the SPIRT decides that its policy, then it goes back to the Council or if staff think that something is policy, then it should go to Council first and should not necessarily go through the SPIRT. If the Council decides that its implementation then it comes back through the Implementation Review Team. I think we need to work out the flowchart or the flow diagram with how this would work and that might provide a little bit more clarity into how this would work in reality.

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**JEFF NEUMAN:** Thanks, Donna. There are some examples below in this paper, but it could be a lot more helpful if we did that kind of flowchart. Paul's absolutely correct and you're correct that one person's policy is another person's ... or the other way around. One person's implementation is another's policy. But that's why the GNSO Council has that oversight role and that's why all the SPIRT team is doing is making recommendations as to whether it believes its policy or implementation and then the recommendations of how to deal with it at that point. That's precisely why we're setting this up and why there's an oversight role from the Council. It's meant to be an advisory type body that helps the Council understand the issues and understand at least its view, it means SPIRT team's view, as to whether it's policy or implementation and how to deal with it. But the Council is always free to accept or not accept those recommendations. Again, it's supposed to be constituted from experts as well so it's much more valuable for the Council.

Anne, please.

**ANNE AIKMAN-SCALESE:** Jeff, I think that what you've just said is exactly right. If it were always within staff's ability to say it clearly, "this is policy" or "this is implementation," We wouldn't need the SPIRT team and for that matter, we probably wouldn't need IRTs either. It's the very fact that there's a discernment exercise that based on the history that we saw in 2012, that needs to go on and then a discernment and an analysis that raises the need for the standing predictability IRT

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to weigh in from all community perspective whether it's something can be solved easily or something needs to be kicked up to GNSO Council.

I don't think that staff can make that determination on their own. We had too many things arise in 2012 round that required some more sophisticated analysis and nobody wants the Board to make certain decisions without the GNSO input. The staff, the SPIRT team with people who had participation in the policy development, that could be helpful because that would be a resource to GNSO Council when they're asked by the Board for input. Well, it's a bit of a chicken and egg question. What is being proposed, if its implementation, the SPIRT can deal with it. And I think wherever it's obviously implementation, that's true, but the hard cases will be trying to assist GNSO Council and identifying whether additional policy work is required or whether what's been recommended, say by the GAC is against the policy that was developed. There's a discernment function that I think would rest within the SPIRT for helping to make recommendations about which side particular issue falls on, whether it falls on the implementation side or the policy side. Thank you.

JEFF NEUMAN:

Thanks. Paul's hand is in the queue. I do want to get to some comments that are made in the chat because there's a concern from Donna and then Paul did a plus one on this is really just going to be adding a much more bureaucracy and delay and make things take longer. I actually think the opposite should be the case.

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If you think back to 2012, it took ICANN two years on the closed generic issue to decide how it was going to deal with closed generics. I'm not saying how to make a decision. I'm talking about even the process of getting community input as to whether it was policy or implementation. It took two years to even get to that point. If you had this SPIRT team that was set up and staffed right and had the right experience, as Anne was saying, that almost immediately as the issue is brought up and recognized as an issue, it gets sent to that SPIRT team, the SPIRT team then provides its guidance or advice as to whether it thinks its policy or implementation, delivers that relatively quickly to the Council and then the Council decides, "You know what? We think it is policy like the SPIRT team recommended, we're going to immediately set up one of our input process, guidance process, whatever and deal with it."

I mean, if we do this right, it could actually drastically reduce the delay that the Board had because it didn't know or have any guidance on how to deal with a lot of these issues. Name collision took three years or at least two years to fully get resolved. I don't think things could get delayed a lot more than that. What we're really talking about is as soon as something rise to the level of an issue, that could have an impact on the program and change the program, that's when the SPIRT team of experts gets into action. That's Donna is saying, I'm assuming that there's no disagreement among the members of the SPIRT team. Perhaps but at least the SPIRT team will have a relatively quick amount of time, give its thoughts, even if it is opposing thoughts or several different types of thoughts to the Council and it could start working

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on that issue instead of taking two years with the Board caught with inaction because of not knowing what to do with it.

Paul, I think you're right, we have to make sure that the SPIRT team is not being lobbied. I'd love to take some recommendations. The point of this is to speed up the process. Yes, we're creating an additional layer, but again if you go back to what happened in 2012, it should actually make things more efficient if we can get this right. If we can't get it right, absolutely, it could be a disaster and we could all decide to disband the SPIRT team if the Council thinks that's appropriate. I have some optimism that it could be very helpful. Paul, please.

PAUL MCGRADY:

Thanks. Just back to the policy versus implementation. If we make policy versus implementation, the gatekeeper function here where implementation can go to the SPIRT policy doesn't go to the SPIRT, rather than making the gatekeeper function who the inputting parties are like staff, Board, maybe Council, then we just all have to remember that everybody will claim when the time comes that the Applicant Guidebook in its final form is a piece of implementation, not a piece of policy, and the distinction between implementation and policy will be lost. So if we are going to make implementation versus policy the gatekeeping function, then we need to drill down a little bit further. I don't think we can leave that to just our standard ICANN community unresolved definitions of that. We're going to get kind of gritty, what are we going to be prepared to do 180s on and what are we not? Thanks.

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JEFF NEUMAN:

Thanks, Paul. Absolutely. But I'm hoping that the SPIRT team – and we're getting towards the end of our call – but I'm hoping The SPIRT team has the expertise on it to make informed recommendations to the Council as to whether it believes it is purely implementation and should be dealt with as implementation. At least the Council is getting some informed opinions – hopefully, informed well-reasoned opinions from a team of experts, as opposed to just one person saying, "I think it's policy," and another person saying, "I think its implementation," without providing the expertise and recommendations behind it.

Plus the Council is not structured to deal with day-to-day issues or implementation like that, to put everything to the Council immediately, that you're talking about an incredible delay. And this is not saying anything bad about the Council. It's just not used to operating like that. Frankly, the Board wasn't used to operating like that and it's not structured to operate like that either. It sort of had to do that kind of thing in the New gTLD Program, but that was the reason why it took two years plus to even decide how to move forward with the process or in some cases five years or six years.

This has been some really good discussion. I'm hoping it's making people feel more comfortable. If it's not, please do help us make it a model that would make it more comfortable for you. So while it's helpful to hear that you're not comfortable and even helpful to hear why, if you could propose things that would make it more comfortable for you, that would be ideal. This is one of the reasons why we try to set up that smaller group, but I don't think that's been working. So please do submit to the full list. If we do

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get bombarded with these types of e-mails, perhaps we'll create a sub-list that not everyone necessarily wants to participate on.

Donna, we are out of time, if you could not put your note in the chat ... Oh, you did put your note in the chat. Okay. So we will take that, we'll send that out with all the notes and then make sure we address it. I don't think I got a chance to read it, so I apologize for that. I think this was a good discussion. I think it is a tough concept. I think once we jump over this hurdle, I think some of the other things will fall into place, I'm hoping. If we're all comfortable with the rules, then I think it'll be easier to get comfortable with conflicts and other types of issues that we have to deal with.

Thank you, everyone. Our next call will be posted right there. We only have one call next week and that's the last call for the calendar year, for those of you that observe the ... was it the solar calendar? For those of you on the lunar calendar, it's a couple more months. Anyway, we will talk to everyone next week. Again, one call next week, not multiple ones. Thanks again. I think it's been a great discussion. Thank you.

**[END OF TRANSCRIPTION]**